

August 30, 1954

Gardner C. Turner, Esq.
Chairman, Board of Trustees
Industrial School
Manchester, New Hampshire

Dear Gardner:

You have inquired (1) whether there is any distinction under the transfer provisions of ss. 23 and 24 of c. 205, L. 1953, between males and females; (2) whether the provisions for transfer above-mentioned supersede the provisions of R. L., c. 132, s. 8; and (3) whether the provisions of R. L., c. 464, ss. 34 and 35, render the aforementioned transfer authority inoperative so far as transfers to the State Prison are concerned.

You are advised that in my opinion the answers to the questions you have put are as follows:

(1) There is no distinction between males and females in regard to your transfer authority under ss. 23 and 24.

(2) The authority to transfer under ss. 23 and 24 is entirely distinct from the provisions of R. L., c. 132, s. 8, which apply to minors in the jurisdiction of the superior court before they are committed to the Industrial School.

(3) The provisions of R. L., c. 464, ss. 34 and 35 do not render inoperative the transfer provision previously cited. The Industrial School may transfer to "some other state institution" (see, L. 1953, c. 205, s. 23) for the term of their minority such minors as may in the opinion of the Board be incorrigible, pursuant to the authority of ss. 23 and 24. However, the provisions of ss. 34 and 35 of R.L., c. 464 in their present form require that a female be sentenced to

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imprisonment in the state prison and convicted of offenses punishable by imprisonment in the state prison before she can be contracted to Vermont. No minor, whether incorrigible or otherwise, originally committed to the Industrial School under the juvenile statute, can meet these requirements, which are conditions precedent to authority to contract with the State of Vermont. Therefore, while L. 1953, c. 205, s. 23, authorizes transfers to "some other state institution" which apparently may include the state prison, there is no authority under present law to transfer the minors to Vermont under contract.

All through the thread of statutory provisions relative to the care and treatment of minor offenders in this state is a concept of protection of the minor against undue publicity, environmental aggravation, and association with adult felons. The legislature has even gone so far as to provide that the chapter dealing with neglected and delinquent children shall be liberally construed (R.L., c. 132, s. 23) and no adjudication under the provisions of c. 132 can be deemed a conviction. It troubles me that R. L., c. 463, s. 23, should be construed to authorize transfer of minors to the state prison at all. See, Petition of Morin, 95 N.H. 518, 521. It may be that by necessary implication such an authority exists but it certainly is contrary to the juvenile statute and contrary to the Legislature's efforts to protect minor delinquents from exposure to hardened criminals.

In any event, it is respectfully suggested that legislation designed to answer specifically the question of transfer of minor male and female incorrigibles either to state prison, or to other state or county correctional institutions, be prepared and ready for introduction at the 1955 Session of the General Court. It would be much more in keeping with the spirit of statutory provisions relative to juvenile delinquents to provide that there should be erected at the Industrial School a separate building equipped for the purpose of local confinement of incorrigibles consistent with security and society's desire to give such minors every reasonable opportunity to learn to live in society within the law.

Sincerely,

Louis C. Wyman
Attorney General

W/d

cc: Parker Hancock, Warden
State Prison